

Honorable Sam J. Ervin, Jr., Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in reply to your letter dated 3 May 1974 requesting the views of this Agency on S. 3393, a bill "To provide for the establishment of a new office in the Executive Office of the President and a Joint Committee in the Congress in order to supervise policies and procedures with respect to the development and review of national defense and foreign policies of the United States and the protection and disclosure of information relating to such policies, and for other purposes.

Under S. 3393, a Joint Committee on Government Secrecy would be established in the Congress to oversee the practices of departments and agencies for the protection and dissemination of Government information to be kept secret, and to make determinations as to disclosure to the Congress and the public. An Office of National Defense and Foreign Policy Information headed by a Registrar would be established in the Executive Office of the President to perform similar functions within the Executive branch and to maintain a Register of such documents.

The principal responsibilities and functions of the Joint Committee are:

- a. To review the practices of all Government departments and agencies for protecting and disseminating secret information and direct revision of such practices.
- b. To direct any agency to provide for its review any document which is entered in the Register of National Defense and Foreign Policy Information and to determine whether such document shall be publicly disclosed.
- c. To make available to Members and other committees of the Congress and to the public such information and reports from the Register which the Joint Committee deems necessary for activities of the Congress or appropriate for an informed public.
- d. To recommend:
 1. procedures for the Congress to protect or disclose documents held by the Congress and designated as secret by officials of the Executive;
 2. action by other committees or agencies of Congress to be taken on requests for public disclosure of or access to documents under their control which are designated as secret by them or other agencies of Congress;

3. procedures for granting congressional employees access to documents designated as secret by the Executive and for disciplining employees for violations;
4. legislation for the protection or disclosure of information dealing with the national defense or foreign policy.

The principal functions of the Registrar of National Defense and Foreign Policy Information are:

- a. To maintain the Register of National Defense and Foreign Policy Information and to review entries on the Register to assure their compliance with the standards under which they are to be kept secret.
- b. To furnish a copy of the Register to the Joint Committee on Government Secrecy.
- c. To review and approve or disapprove proposed final administrative actions by any department or agency which would deny access to information, requested under the Freedom of Information Act, on the basis of classification.
- d. To review and standardize practices and procedures within the Executive relating to security classification, security clearance procedures, and security measures for automatic data processing of secret information.

e. To report annually to the Congress, including data on the numbers and titles of officials authorized to classify information, the number of documents classified and declassified during the preceding year, and the number of documents to be kept secret for more than three years.

Additionally, under S. 3393, all secret documents must be entered on the Register, indicating the originating agency and official, and date for declassification. A code may be substituted for the name if anonymity serves the interest of personal safety.

Finally, all existing classified documents must be entered in the Register either immediately or, for those classified within the previous ten years, within four years following enactment.

In considering the impact of S. 3393 upon the Central Intelligence Agency, it must be recognized that the protection of foreign intelligence information carries with it the added burden of protecting the Intelligence Sources and Methods that are involved in its collection and analysis. Grave damage to the nation's security could result if such Sources and Methods are not adequately protected. For example, vulnerable foreign sources would be understandably reluctant to provide information if they could not rely on the protection of their identity.

Congress recognized these underlying considerations in the National Security Act of 1947, Section 102(d)(3), which provides:

"That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

In furthering of this statutory injunction, the security practices and disciplines of the Agency are specially structured to protect Intelligence Sources and Methods. Channels of dissemination are rigidly controlled and personnel and physical security standards exceed those established under Executive Orders.

S. 3393 would grant the Joint Committee on Government Secrecy and the Registrar authority to oversee the Agency's security program and to direct the disclosure of foreign intelligence information by overruling a decision of the Director of Central Intelligence. Such actions could conflict directly with the statutory responsibility of the Director to protect Intelligence Sources and Methods and would likely impinge upon the effectiveness of existing foreign intelligence collection programs.

The Register required to be established under S. 3393 would include a fairly comprehensive designation of the total holdings of sensitive foreign intelligence information in the Government. The sensitivity of the compilation itself would exceed that of any one document in the Register, but no provision is made in the bill for its protection.

Unless personal safety is at issue, Agency employees who classify information must be identified in the Register. This requirement conflicts with section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C.A. 403g), which exempts from disclosure the names and official titles of Agency personnel.

In view of the above considerations, if S. 3393 is favorably acted upon by your Committee, it is requested that there be an appropriate exemption for Intelligence Sources and Methods as covered in the National Security Act of 1947 [50 U.S.C.A. 403(d)(3)].

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

☐ UNCLASSIFIED

☐ INTERNAL
USE ONLY

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☐ CONFIDENTIAL

☐ SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

S. 3393

FROM:

OLC
7D35

EXTENSION

6136

NO.

DATE

16 May 1974

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

DDI([REDACTED]
DDO [REDACTED]

2.

M&S [REDACTED]
OS([REDACTED]
ISAS [REDACTED]

3.

OGC [REDACTED]
S&T([REDACTED]

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Attached for your review and concurrence is a proposed draft report on S. 3393.

Would appreciate your oral response as soon as possible (x6136, R9227).

[REDACTED] TL
Assistant Legislative Counsel

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